

No. 11,027

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

F. URI & Co., INC. (a copartnership);
GEORGE URI and MRS. BELL HOUSTON,
copartners,

Appellants,

vs.

CHESTER BOWLES, Administrator, Office of
Price Administration,

Appellee.

Upon Appeal from the District Court of the United States for the
Northern District of California, Southern Division.

BRIEF FOR APPELLANT.

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Appellee.

Upon Appeal from the District Court of the United States for the
Northern District of California, Southern Division.

BRIEF FOR APPELLANT.

I.

JURISDICTION.

The Price Administrator instituted this suit in the District Court pursuant to Section 205(a) of the Emergency Price Control Act of 1942 (R-2), hereinafter referred to as "the Act", and jurisdiction of the District Court was properly exercised under Section 205(c) of the Act. (Pub. L. 421, 77th Cong., 2nd sess., c. 26, 56 Stat. 23, 50 U.S.C. Appx. 901, et seq. as

amended by the Stabilization Extension Act of 1944, Pub. L. 383, 78th Cong., 2nd sess.)

The judgment of the District Court was entered January 8, 1945. (R-25.) Notice of appeal was filed January 18, 1945. (R-26.) This Court has jurisdiction of the appeal by virtue of Section 129 of the Judicial Code. (28 U.S.C., Sec. 227, 36 Stat. 1134.)

II.

STATEMENT OF THE CASE AND QUESTIONS INVOLVED ON APPEAL.

A. Statement of the case.

On May 26, 1943, the Administrator issued Amendment 12 to Revised Maximum Price Regulation No. 169 and therein defined the term "hotel supply house", and provided a premium which might be charged by such establishments for fabricated meats sold to purveyors of meals.

Appellants qualified as a hotel supply house under said amendment and thereafter charged such authorized prices for such sales.

Several months later, October 20, 1943, the Administrator issued an interpretation to the effect that hotel supply houses lost their status as such if they sold any meats to persons other than purveyors of meals. (Apx. O.) Appellants had sold a minor part of their meats to non-purveyors of meals during the base period, and had continued to sell a minor part of their meats to such buyers during the period of

August 1, 1943 to February 1, 1944, and on February 29, 1944, appellee filed a complaint against appellants in the lower Court. Answer having been duly filed, the question as to whether a hotel supply house must sell exclusively to purveyors of meals in order to retain its status was submitted to the Court below at a pretrial conference, and that question was decided affirmatively by the lower Court as set forth in the memorandum decision on pretrial order (R-11), and judgment was rendered on behalf of appellee for the sum of \$6755.30. (R-24.) Evidence submitted at the regular trial was restricted to matters concerning the good faith of the appellants.

B. Questions involved on appeal.

The only question involved on this appeal is whether or not the District Court erred in construing the definition of the term "hotel supply house" as it appears in Amendment 12 to RMPR 169 (Apx. H), as requiring a hotel supply house to maintain a separate selling establishment devoted to the business of selling meats exclusively to purveyors of meals.

This question does not involve the validity of the regulation and calls only for a determination of the real meaning of the regulation in order to determine whether or not appellants have infringed same.

III.

SPECIFICATIONS OF ERROR.

Appellants specify the following errors which they intend to urge and upon which they rely in the prosecution of this appeal:

1. That in his memorandum decision on pretrial order, the District Court Judge erred in finding that to maintain the status of a hotel supply house, appellants must maintain a separate selling establishment devoted to sales to purveyors of meals to the exclusion of any other selling activity.

2. That the District Court Judge erred in finding that appellants had so lost said status and that the said Court erred in giving judgment to appellee in the sum of six thousand seven hundred and fifty-five dollars and thirty cents (\$6755.30).

IV.**SUMMARY OF ARGUMENT.**

Appellants qualified as a hotel supply house under the definition set forth in Amendment 12 to RMPR-169 by virtue of having maintained a separate selling establishment in which meats were fabricated and through which during the base period, September 15-December 15, 1942, 70 per cent of all of their meats were sold to purveyors of meals. Having so qualified, appellants were entitled to charge hotel supply house prices as long as their selling establishment remained physically unattached to the selling establishment of

any other type of seller, and as long as sales to purveyors of meals remained the "chief" function of their selling establishment.

During the period herein at issue, appellants, from the same single establishment, continued to fabricate meats and sell more than 70 per cent of their meats to purveyors of meals. Sales of 30 per cent or less of their meats to other types of buyers did not serve to destroy the separate character of their establishment after Amendment 12 was issued any more than such sales served to destroy that separate character when made during the base period.

It was the expressed intention of the Administrator to "safeguard normal channels of distribution", and re-establish "according to customary trade practices, differentials * * *" between different types of sellers. It was not his intention to change such practices or destroy such differentials. Companies which had historically received hotel supply house prices were to continue to receive them. Companies which had traditionally sold for less money were to continue to receive less money.

To construe Amendment 12 as requiring that sales to purveyors of meals should thereafter be the "exclusive" rather than the "chief" function of a hotel supply house is to say that the Administrator intended to change rather than to re-establish and safeguard customary business practices. Such a construction does violence to the established rules of legal and grammatical construction and distorts the plain meaning of ordinary words and phrases, and is at odds

with the intentions expressed by the Administrator in his statement of considerations issued in support of said amendment.

V.

ARGUMENT.

A. HISTORICALLY, PACKERS, WHOLESALERS AND OTHERS WHO CONDUCTED DIVERSIFIED OPERATIONS RECEIVED LOWER PRICES THAN HOTEL SUPPLY HOUSES.

The statement of considerations, supporting Amendment 12 to RMPR-169, excerpts from which are set forth in Apx. E of this brief, sets out quite clearly the historical trade distinctions which existed within the meat industry.

Packers were the slaughterers of live cattle, who processed meat and its by-products, and sold fresh meat primarily to wholesalers and hotel supply houses.

Wholesalers purchased carcasses from the packer and sold sides and cuts of meat primarily to retailers.

Hotel supply companies were those firms whose chief function was that of fabricating meats and supplying meats to purveyors of meals. Such firms bought carcasses from packers and had to maintain a constant rather than an occasional supply of fabricated cuts, and had to make frequent small deliveries to their customers. Because of these and other specialized services, the separate hotel supply houses historically received higher prices than other types of distributor.

In some instances, a packer or wholesaler operated a hotel supply house as a separate business, not connected with his wholesale or packing plant. Such operation entailed a separate premises with separate overhead, and with its facilities and personnel devoted chiefly to fabricating meat cuts and selling meats to purveyors of meals. Where such a separate establishment rendered the same specialized services as the independently owned hotel supply house it was considered to be a hotel supply house and historically received hotel supply house prices. (Apx. E.)

However, as the Administrator points out (Apx. E, Art. I, Par. 4):

“Many packers selling direct to hotels and restaurants have offered a less specialized service than the hotel supply houses. Because of this limited service and the spreading of overhead through diversified operations, costs of hotel supply departments of packers and the average margins obtained by them have generally been less than those of separate hotel supply companies.”

The distinction is clear. The packer or wholesaler who supplied purveyors of meals as a sideline to his packing or wholesaling business could and traditionally did sell for comparatively low prices. The hotel supply house, whether independently or packer or wholesaler owned, had to look to its hotel supply business to support a separate establishment and had to render specialized services which had historically necessitated a higher schedule of prices for the same fabricated cuts of meat.

It was to protect the historic differentials existing between these two types of sellers that Amendment 12 was promulgated. As the Administrator stated in his statement of considerations (Apx. E):

“Allowing a higher percentage of mark-up for the maximum prices for fabricated cuts sold by hotel supply houses than for those sold by slaughterers and packers’ branch houses, tends to maintain the relationship that existed in the past between prices obtained by the two types of sellers and preserve their competitive positions. It recognizes that the packer has obtained part of his profit in the price of the primal cut and that the diversified operations of the packer help to carry his overhead. In addition, the services rendered by packers to purveyors of meals have usually been less complete, thus making their costs in supplying this trade somewhat lower than the costs of the unaffiliated hotel supply companies.”

B. THE ADMINISTRATOR’S PREVIOUS ATTEMPT TO RECOGNIZE HISTORIC PRICE DIFFERENTIALS HAD RESULTED IN FAILURE.

If the Administrator was to obey the legal requirement that he must not needlessly disturb established business practices (Apx. A), it was necessary that his regulations recognize the price differentials existing within the meat industry. His first attempt to accord this recognition was made on December 10, 1942, when he issued Revised Maximum Price Regulation 169 and therein for the first time defined “hotel supply

house", and provided for an additional 20 per cent mark-up for hotel supply houses. (Apx. B-C.)

In defining "hotel supply house" in Revised Maximum Price Regulation 169, the Administrator failed to draw any distinction between those whose chief function had been supplying purveyors of meals, and those who had rendered such service merely as a minor part of their packing or wholesaling activities. Thus the Administrator made it possible for anyone who had an established practice of fabricating meat for sale to purveyors of meals to qualify as a hotel supply house and charge an additional 20 per cent, no matter how small a part of his operations such a practice might have been.

The result of this was to entirely disrupt normal trade practices and allow firms which had never received hotel supply house prices to charge such prices. All sellers sought to move as much meat as possible through hotel supply house operations. Hotel supply houses, not affiliated with packers, found difficulty in obtaining products from their usual sources of supply. (Apx. E, Art. II, Pars. 1 and 2.)

These and other results of RMPR-169 were directly opposite to those contemplated by the Administrator. Instead of re-establishing normal business practices, it destroyed them. Hotel supply houses were often unable to get meat; other sellers moved in and operated under hotel supply house prices; meat shortages in retail stores were magnified and retailers put under pressure to evade the regulation. (Apx. E, Par. 2.)

C. IN ORDER TO PREVENT ABUSES AND SAFEGUARD NORMAL TRADE PRACTICES, THE ADMINISTRATOR ISSUED AMENDMENT 12 TO RMPR-169.

In order to correct these abuses, and to safeguard normal channels of distribution, and reestablish customary trade practices (Apx. D, and Apx. F), the Administrator, five months later, issued Amendment 12 to RMPR-169 on May 26, 1943, and therein redefined the term "hotel supply house" (Apx. H), and set up separate schedules of prices for fabricated cuts sold to purveyors of meals, for: 1. "Hotel supply houses", and 2. "Packing or slaughtering plants, packing branch houses, wholesalers, or other selling establishment." (Apx. L and M.)

It was not with any idea of changing the methods of operation of the legitimate hotel supply house that Amendment 12 was issued. Nowhere in any release, statement of considerations, regulation or amendment is such a purpose even remotely suggested. On the contrary, every implication in every one of such documents is to the effect that the desire was to restore normal relationships between the various types of distributors. (Apx. D, Pars. 1 and 2.)

In order to achieve that purpose, the Administrator drew a line between those whose chief function had been that of fabricating meats and selling same (along with other meat products) to purveyors of meals, and those to whom such a function had historically been a minor part of their operations. This purpose was achieved when Amendment 12 redefined the term "hotel supply house" as follows:

“ ‘Hotel Supply House’ means a separate selling establishment which is not physically attached to a packing or slaughtering plant, packer’s branch house, wholesaler’s or other selling establishment; which is engaged in the fabrication of meat cuts and in the sale of fabricated meat cuts, variety meats and edible by-products to purveyors of meals; and which during the period September 15 through December 15, 1942, sold to purveyors of meals, other than war procurement agencies, 70 percent of the total weight volume of meat, variety meats, or edible by-products sold by it.”

In regard to that definition it will be noted first of all that it bars newcomers from the hotel supply business. One must have had a base period experience in order to qualify as a hotel supply house.

Again, that definition requires the base period existence of a “separate selling establishment,” the chief function of which was fabricating meat cuts and selling meats to purveyors of meals. A base period separate selling establishment was insufficient unless it could meet the 70 percent sales requirement. Neither could a packer or wholesaler have designated a corner of his shipping room as a hotel supply department and claim hotel supply house status because 70 percent of the sales made from that corner had been made to purveyors of meals. Separateness, which means independent and additional overhead, was also a prerequisite.

Even more clearly than in the definition, the need for a base period separate establishment and for base period sales of 70 percent or more, is set forth in the

statement of considerations (Apx. E), which reads in part as follows:

“To qualify as a hotel supply house a packing or slaughtering plant, packer’s branch house or wholesaler’s, or other type of establishment *must have maintained a separate selling unit not physically attached* to the slaughtering plant, branch house, or wholesaler’s, or other establishment *through which* at least 70 percent of the total weight volume of meat *distributed in the base period was sold or delivered* to purveyors of meals.” (Italics added.)

The necessity for a base period experience entailing a separate establishment and 70 percent sales may also be adduced by a simple grammatical analysis of the definitive sentence. Each time the pronoun “which” appears in the definition it refers back to the term “separate selling establishment”. It can refer to nothing else. This is more obvious when the sentence is contracted to read as follows:

“Hotel supply house means a separate selling establishment * * *; which during the base period September 15 through December 15, 1942, sold to purveyors of meals * * * 70 percent of the total weight volume of meat, variety meats, or edible by-products sold by it.”

There is not a word in that definition which even intimates that hotel supply houses must make 100 percent sales to purveyors of meals. The absence of such restrictive words as “only” or “exclusively” is conspicuous in the light of the present litigation. Base period sales of 70 percent to purveyors of meals and

30 percent to other buyers did not then destroy the "separate" character of the hotel supply house premises. It is difficult to understand how subsequent sales of 30 percent or less to other buyers can now be construed as destroying the "separate" character of an establishment which had to be "separate" during the base period when it was selling 30 percent or less of its meats to other buyers.

The word "separate" in "separate selling establishment" is explained by the words which follow: namely, "which is not physically attached to a packing or slaughtering plant, etc." The separateness required is not to be achieved by dedicating one establishment to the performance of a single function, but by maintaining physical separation between two selling premises of different types.

During the base period a packer might have maintained two affiliated, but physically separate, selling establishments. He could have performed two functions in each establishment. He could have used the first for slaughtering and packing and the second for wholesaling and supplying hotels and restaurants. The fact that each was performing more than a single function would not destroy their separate character nor cause them to become physically attached to each other. However, the owner could qualify the second separate selling establishment as a hotel supply house only if during the base period 70 percent of the meats sold through that second establishment had been sold to purveyors of meals.

Appellants, having qualified as a hotel supply house, could lose that status only in one of three ways. They could go out of business. They could become attached, physically, to another selling establishment, the chief function of which would be selling meats to persons other than purveyors of meals. They could change their operations so that the function of the same selling establishment through which they qualified was no longer that of selling chiefly to purveyors of meals.

Appellants' qualification as a hotel supply house has been stipulated. It has not been alleged that they have either gone out of business, nor that their establishment has become physically connected with another selling establishment performing a different function. Neither has it been alleged that appellants discontinued the practice of making sales to purveyors of meals the chief function of their single selling establishment.

On the contrary, it has been stipulated that appellants qualified as a hotel supply house by reason of having sold 70 percent of their meats during the base period to purveyors of meals (Pre-Trial Order, R-16, Par. 3(c)), from a "single selling establishment" (Findings of Fact, Par. 3(b), R-20), and that they continued to sell more than 70 percent of their meats to purveyors of meals from that same establishment, during the period covered by this litigation. (Findings of Fact, Par. 3(c), R-20.)

Had appellants changed the nature of their business so that wholesaling to retailers became the chief func-

tion, it would be conceded that they might have lost their status as a hotel supply house. Had appellants set up a packing or wholesaling business adjacent to and physically connected with their established selling premises, loss of status would be conceded. Such an action would have enabled them to spread their overhead over diversified operations, and they could have looked for part of their profit to such added activities.

The action of appellants in selling a small part of their meats to persons other than purveyors of meals achieved no such purpose. The lower Court found as a fact that all sales of primal cuts made by defendants to butchers were made at defendants' costs without any mark-up or profit whatsoever. That all sales of scraps, bones, and fats were made at the proper ceiling prices therefor. (Findings of Fact, Par. 3(h), R-22-23.) Such ceilings provided no premiums.

The judgment of the Court below was not based upon any action of appellants in establishing physical contact between their premises and another selling premises; nor upon any action by appellants in substituting some function other than that of supplying purveyors of meals as the chief function of their own selling establishment. The decision of the lower Court is based upon a single sale to P. Micheletti and Co. on August 6, 1943, which company was not a purveyor of meals.

The Court held as a matter of law that as a result of said sale, appellants lost their status as a hotel supply house. (Findings of Fact and Conclusions of Law, Par. 3(e), R-21.)

It is submitted that such a sale to P. Micheletti and Co. did not serve to destroy the "separate" character of appellants' selling establishment when made on August 3, 1943, than such a sale did destroy or would have destroyed such "separate" character if or when made during the base period. If such is the case then one base period sale to a buyer other than a purveyor of meals would have destroyed the separate character of appellants' selling establishment during the base period, and they could not have qualified as a hotel supply house.

D. THE EFFECT OF THE DECISION OF THE LOWER COURT IS TO DESTROY RATHER THAN TO PRESERVE ESTABLISHED BUSINESS PRACTICES.

In his memorandum decision on pre-trial order (R-14) the District Court stated:

"Designating a 'hotel supply house' in the regulation as 'a separate selling establishment' would seem to have no other reasonable purpose than that of exclusion of any other selling activity."

It was upon that sentence that the judgment of the lower Court was based.

In reaching the conclusion that the term "separate selling establishment" precludes any other selling activity, the Court below adopted a construction which was not intended by the Administrator when he issued Amendment 12, and which is clearly at variance with those intentions as set forth in the statement of considerations supporting Amendment 12, and with the provisions of the Amendment itself.

The Administrator in his statement of considerations (Apx. E, Art. I, Par. 1), states that:

“There *are* approximately 600 business establishments in the United States, whose *chief function is* that of preparing and fabricating meat cuts and selling them (along with other meat products) to hotels, restaurants and other purveyors of meals. These establishments *are* generally known as hotel supply houses.” (Italics added.)

Sales of meat to purveyors of meals not only “was” but “is” the “chief” and not the “exclusive” function of the hotel supply house.

The Administrator also stated in Article III of said Statement, above quoted, that allowing a premium to hotel supply houses tends to maintain the relationship which existed in the past between the two types of sellers and preserve their competitive positions.

The interpretation of the lower Court would not serve to maintain the relationships which had previously existed. It would destroy them.

Aside from the need to sell surplus cuts to retailers, it is manifestly impossible for a hotel supply house to sell to purveyors of meals, to the exclusion of any other selling activity. Bones, fat, scraps and waste are the by-products of fabrication, and have to be sold not only to restaurants but to tallow renderers and others. These products are under ceilings, and Amendment 12 requires that the same records be kept of sales of such products whether edible or inedible as are kept of sales of the better cuts of meat. (Apx. G.) Such items are considered meats and meat ration

points had to be collected for them. (Apx. M.) Failure to keep such records or collect such points would have been just as much a violation of the law as to sell at above-ceiling prices.

In addition to and immediately preceding the sentence above quoted from the memorandum decision on pre-trial order (R-14), the Court further stated:

“The ‘statement of considerations’ issued by the Administrator pursuant to Section 2-A of the Act, indicates some of the factors underlying and justifying such purpose and intent. Meat purveyors, a substantial amount of whose sales during the base period, were to purveyors of meals, are granted by the regulation the status of a ‘hotel supply house’ if they maintain a separate selling establishment devoted to that business. There appear to be adequate administrative bases for that requirement. Difficulty of enforcement to attain the objectives of the law alone appear to be a sufficient reason.”

Had the Administrator intended to change the “chief function” of a hotel supply house so that that function would thereafter be its “exclusive” function, Section 2-A of the Act does make it incumbent upon the Administrator to state the considerations necessitating such a change.

Nowhere in the statement of considerations referred to by the Court below does there appear any intimation that such a change is contemplated. Nowhere in that statement is any consideration stated to the effect that such a change is necessary, nor is there a single consideration stated to show why such a change is

necessary. Nowhere in said statement is there a single word to the effect that enforcement difficulties require that a separate selling establishment which sold 70 per cent of its meats to purveyors of meals during the base period must thereafter sell 100 per cent to such buyers.

The statement of considerations does set out at length the real reasons why the Amendment was issued; to maintain relationships that existed in the past and to correct the abuses which arose during the five months preceding the promulgation of the Amendment. If it was contemplated that established business practices be changed, the Administrator would have stated that such a change was to be imposed and he would have stated the considerations necessitating such a change. 'Section 2-A of the Emergency Price Control Act, cited by the Court, required him to make such a statement. That he stated no such considerations is proof that no such change was contemplated.

When the Court below uses the words "if they maintain" a separate selling establishment, it is evident that said Court regards the maintenance of such separate selling establishment as a new requirement becoming effective concurrently with the issuance of Amendment 12, whereas it is obvious that a packer who sold 70 per cent of his meats to purveyors of meals during the base period could not qualify the establishment through which he made such sales as a hotel supply house if, during that base period, that establishment had been physically connected with his packing plant.

Such a separate selling establishment had to be maintained during the base period. It was not a currently new requirement. The establishment which was "separate" during the base period when it was selling less than 100 per cent of its meats to purveyors of meals did not automatically become physically attached to another selling establishment when it continued to do exactly the same thing after Amendment 12 was issued.

E. NOT ONLY DID THE ADMINISTRATOR INTEND THAT HOTEL SUPPLY HOUSES MIGHT SELL TO OTHER BUYERS, BUT HE SPECIFICALLY PROVIDED FOR SUCH SALES.

The Administrator not only refrained from intimating that in the future hotel supply houses would have to make sales to purveyors of meals their exclusive function, but he specifically provided for sales to other buyers.

On page 2 of Amendment 12, and facing the paragraph in which "hotel supply house" is defined, the Administrator provided in Section 1364.407(e) (Apx. G), that:

*"Every separate selling establishment making sales to purveyors of meals * * * shall keep for inspection by the Office of Price Administration * * * a complete and accurate record * * * showing separately the sales in pounds of each grade of each item made to purveyors of meals, war procurement agencies and other government agencies, and the sales in pounds made to other buyers."* (Italics added.)

Section 1364.454(5) of RMPR-169 (Apx. J), which was in effect during the whole period covered by this litigation, provides in part:

“For local delivery made from the place of business of a wholesaler or *hotel supply house* * * * to the place of business of a *seller at retail*, purveyor of meals or *commercial user* * * * located more than 25 miles from such shipping point; the seller may add the cost of local delivery * * *.” (Italics added.)

Section 1364.172(b), MPR-239 (Apx. I), shows that what was actually prohibited was sales to other buyers at prices authorized only for sales to purveyors of meals. This provision was also in effect during the entire period covered by this action.

The statement of considerations for Amendment 1 of MPR-398 (Apx. K), definitely infers that hotel supply houses may sell to retailers but not at the \$2.00 mark-up provided for sales to purveyors of meals.

F. THE ONLY POINT AT ISSUE INVOLVES THE MEANING OF THE DEFINITION OF HOTEL SUPPLY HOUSE.

In his memorandum decision on pre-trial order (R-13), the Court states in part as follows:

“It is conceded that if the regulation means what the Administrator claims, the defendant has infringed same. With the validity of the regulation, this Court has no concern. (Section 204-d of the Act.) The Court is here called upon to determine the meaning of the regulation only for the pur-

pose of deciding whether defendant has infringed as charged in the complaint.”

The “meaning of the regulation” was the only question at issue in the lower Court, and is the only question at issue on appeal. Nowhere in the Record does it appear that the Court was asked to give or did give any particular weight to the Administrator’s interpretation to the effect that a hotel supply house is confined by the amendment to sales exclusively to purveyors of meals. Rather the Record shows that the Court was called upon to reach and did reach his own conclusion as to the meaning of the definition of a hotel supply house as it appears in the amendment.

It is respectfully submitted that the meaning of words and phrases as they appear in any law or regulation is to be determined by the intentions expressed by the legislators or the executive at the time that law or regulation is adopted, and not on the basis of some conflicting statement made months after such law or regulation becomes effective.

If the Administrator had desired to prohibit sales by hotel supply houses to retailers, he had only to issue a statement of considerations and promulgate a regulation into which he had written such a provision. That regulation would then have been law, and appellants would have been charged with notice thereof. He can not escape the legal requirements of issuing a statement of considerations and of writing a new amendment, by stating that an existing regulation means something that it does not mean, and which he obviously did not intend it to mean when he wrote it.

Amendment 12 was issued for a single purpose, and that was to correct the abuses which followed issuance of RMPR-169 five months earlier, by giving a premium to those dealers who had been "predominantly" engaged in the business of supplying purveyors of meals during the base period. If a dealer had been so predominantly engaged, he was entitled to the premium; otherwise he was not so entitled. Appellants had been so engaged and were entitled to the premium which execution of the judgment of the District Court would in effect take away from them.

That such was the purpose of Amendment 12, was restated by the Administrator more than a year after issuance of the Amendment; nine months after he had issued the conflicting interpretation with which appellants take issue herein; and five months after complaint against appellants was filed in the lower Court.

On July 6, 1944, in dismissing an amended protest filed by Oswald and Hess Company, Pittsburgh, Pennsylvania, the Administrator stated:

"On the other hand the Administrator recognized that preservation of the historical price premium enjoyed by the particular class of sellers known as hotel supply houses involved considerable difficulties, it was obviously necessary to prevent sellers from taking undue advantage of that premium and diverting supplies needed in a short market from the customary channels of distribution to the hotel and restaurant trade. *Therefore eligibility for the premium was restricted to those who during a specified base period predominantly engaged in that trade* and in addition a limitation

of the amount of fabricated meat cuts which may be sold to purveyors of meals was established in the form of a quota determined by the amount of such sales made during such base period." (Italics added.)

* * * * *

United States Emergency Court of Appeals,
No. 49, March 29, 1945. (Commerce Clearing
House, War Law Service, Price Control
Cases, Section 52,177.)

VI.

CONCLUSION.

It is respectfully submitted that appellants, having qualified as a hotel supply house by maintaining a separate selling establishment in which they fabricated meat cuts and through which during the base period they sold at least 70 per cent of their meats to purveyors of meals and the balance to other buyers, did not lose their status as a hotel supply house when they continued to make sales to purveyors of meals the chief function of the same establishment after promulgation of Amendment 12; and that appellants were entitled to charge the prices for sales of fabricated cuts to purveyors of meals which are authorized by said amendment for sales by hotel supply houses (Ap. L), and were not restricted to the prices authorized for sales of such cuts to such purveyors by packers, packer's branch houses, wholesalers or other types of distributors. (Ap. M.)

It is respectfully submitted that the judgment of the lower Court awarding appellee the sum of \$6755.30 should be reversed.

Dated, San Francisco, California,

June 15, 1945.

Respectfully submitted,

EDMOND F. MAHER,

Attorney for Appellants.

Appendices A to O Follow.)

Appendices.

Appendix A

Section 2(h) of the Emergency Price Control Act of 1942

(Pub. L. 421, 77th Cong., 2nd Sess., c. 26,
56 Stat. 23, 50 U. S. C. Appendix 901, et seq.)

(h) The powers granted in this section shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution, established in any industry, or changes in established rental practices, except where such action is affirmatively found by the Administrator to be necessary to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this Act.

Appendix B

Excerpt from
Rev. MPR-169 as issued
December 10, 1942

Section 1364.455(13) "Hotel Supply House" means a seller of beef, veal or processed products who as an established practice handles beef and/or veal for the purpose of boning, trimming and cutting or otherwise fabricating such beef and/or veal for resale to hotels, restaurants or other purveyors of meals.

Appendix C

Excerpt from
Press Release Attached to
Rev. MPR-169 as issued
December 10, 1942

(4) Hotel and restaurant supply houses—performing certain services for purveyors of meals lacking facilities—will have the same prices as other independent wholesalers so far as most wholesale beef cuts are concerned. However, on the sale of fabricated cuts—specifically cutting up primal cuts into roasts, steaks, stews, etc. by boning or sawing through the bones of the wholesale cuts so as to prepare the meat for cooking without further fabrication—hotel supply houses may have a 20 per cent mark-up over the zone price where such fabricating is done. This 20 per cent also will apply to wholesale cuts from which at least 25 per cent of the bone has been removed. However each such hotel supplier must file his ceiling price with OPA for each fabricated cut, describing the cut and showing cutting yields obtained.

Appendix D

Excerpts from
Page 1 of
Rev. MPR-169, Amendment No. 12
Dated May 26, 1943

Advance Release: OPA-2559
for Thursday Morning Papers,
May 27, 1943

* * * * *

Besides lowering prices for these cuts, OPA has taken steps to *safeguard normal channels of distribution* by setting limits on the proportion of beef and veal that may be diverted by each seller to the hotel and restaurant trade in the form of fabricated cuts. No hotel supply house, slaughterer, packer's branch house or wholesaler will be permitted, during specified three-month periods to sell to purveyors of meals more meat in the form of fabricated cuts than 70 per cent of the volume of all meat and meat products sold by it to such buyers in the period from September 15, 1942, to December 15, 1942. However, sales to war procurement agencies are excluded from the 70 per cent restriction.

The amendment establishes, *according to customary trade practice*, differentials between specific ceilings on fabricated cuts allowed hotel supply houses and those allowed slaughterers, packer's branch houses and wholesalers. By making prices for such cuts less attractive to the latter class of sellers than they have been recently, the new ceilings are expected to work hand in hand with the 70 per cent restriction in diverting meats to retail stores.

The moves are part of another step toward establishing specific prices for all meats at the wholesale level. Specific prices that hotel supply houses may charge for fabricated cuts when sold to "purveyors of meals," were established for lamb and mutton last December. Ceiling prices for fabricated cuts of beef and veal, when sold by hotel supply houses and similar distributors, had been set first under a freeze date. Since December 17, 1942, ceiling prices for these cuts of beef, when sold by hotel supply houses and such sellers as packer's branch houses to restaurants and other purveyors of meals, have been based on a formula which allowed a mark-up of 20 per cent over the ceiling price of the primal cuts from which the fabricated cuts were made.

* * * * * * *

The two classes of sellers for whom the prices for fabricated cuts are established are described more fully as follows:

(1) Hotel Supply Houses, which are permitted to use the prices provided for such sellers, are separate selling establishments not physically attached to a packing or slaughtering plant, packer's branch house, wholesaler's, or other selling establishment, which are engaged in the fabrication and sale of meat cuts, variety meats, and edible by-products to purveyors of meals, and which, during the period September 15, 1942, through December 15, 1942, sold to purveyors of meals, other than war procurement agencies, 70 per cent of the total weight volume of meat, variety meats, or edible by-products sold by it.

(2) Packing or slaughtering plants, packing branch houses, or wholesalers or other types of distributive establishments which may use the specific prices for fabricated cuts sold to purveyors of meals that are provided for this group, are those which sold fabricated cuts of beef or veal in any volume to purveyors of meals in the base period of September 15 to December 15, 1942. They may not, however, sell fabricated cuts of all kinds in quantities more than 70 per cent by weight of their total sales of all meat and meat products in that base period.

The lists of standardized fabricated cuts and their definitions were worked out in consultation with representative members of the hotel supply industry, including both hotel supply companies and the hotel supply departments of packing companies.

Cutting tests were conducted for both beef and veal fabricated cuts and the results of the tests were checked against each other, and against information in order to determine yield data to be used.

For each fabricated beef cut, for example, the yield for the fabricated cut, expressed as a percentage of the primal cut, was computed by taking an approximate average of figures from cutting tests conducted in San Francisco, Kansas City, St. Louis, Chicago, Washington, D. C., New York and Boston. The tests were made by reputable hotel supply houses which were instructed by the OPA in the method of cutting and the extent of fabrication for each cut. Representatives of the OPA attended some of the tests. (*Italics added.*)

Appendix E

Excerpts From Document No. 16,205

Office of Price Administration Statement of Considerations Involved in the Issuance of Amendment No. 12 to Revised Maximum Price Regulation No. 169 Beef and Veal Carcasses and Wholesale Cuts Dated May 26, 1943.

* * * * *

I. The nature of the industry.

There are approximately 600 business establishments in the United States whose *chief function is* that of preparing and fabricating meat cuts and selling them (along with other meat products) to hotels, restaurants, and other purveyors of meals. These establishments *are* generally known as hotel supply houses. Some meat packing companies also perform this function as a minor part of their operations, either directly at their plants or branch houses or through subsidiary companies.

According to the Census of Business' Retail Sales statistics for 1939, the combined sales of restaurants, cafeterias, lunch rooms, lunch counters, and stands in the United States totaled over two billion dollars. Members of the hotel supply industry estimate that, allowing for the increase in prices, approximately a billion dollars' worth of meat and meat products were sold to restaurants, hotels, and other purveyors of

meals in 1942. About 75 per cent of the total sales consisted of beef and veal. Hotel supply houses account for approximately 70 per cent of the total volume of sales of meats to purveyors of meals.

Functions performed by hotel supply houses and the hotel supply departments of packing companies include providing special selections, aging and trimming of primal cuts which may be sold as such or fabricated into steaks, roasts, stews and ground meat to fulfill the varying specifications of different types of purveyors of meals. Frequent and sometimes small deliveries are required. Because of these special services, costs are considerably higher than are involved in the wholesale distribution of meat to retailers. Hence, special pricing provisions are necessary to make possible continuation of the services the hotel supply units render.

Historically, the large packers appear to have recognized the hotel supply houses as the principal supplier of the hotel and restaurant trade, and have been an important source of supply for the majority of hotel supply houses. Many packers selling direct to hotels and restaurants have offered a less specialized service than the hotel supply houses. Because of this limited service and the spreading of overhead through diversified operations, costs of hotel supply departments of packers and the average margins obtained by them have generally been less than those of separate hotel supply companies.

II. History of price action and need for specific ceiling prices.

* * * * *

Immediately after Revised Maximum Price Regulation No. 169 was issued, many packers either began or greatly increased operations in the hotel supply branch of the meat industry. Numerous reports were received by the Office of Price Administration that hotels and restaurants had abundant supplies of beef while great scarcity prevailed in retail stores. Hotel supply houses not affiliated with packing companies experienced difficulty in obtaining products from their usual sources of supply.

It was apparent that the mark-up of 20 per cent allowed made sales of fabricated cuts to hotels and restaurants more attractive than sales through other outlets, even after allowing for the additional costs of hotel supply house operations. Sellers sought to move the maximum quantity through hotel supply channels, this magnifying the shortage in retail stores and putting retailers under pressure to evade the regulation by buying from hotel supply departments in order to obtain product. Because of the shortage and the fact that they possessed the meat, slaughterers were in a strategic position to take over a large proportion of the hotel supply business. Furthermore, the fact that some of the specialized services formerly offered by hotel supply houses were no longer necessary to obtain order from hotels and restaurants, because of the shortage of meat, favored expansion by packers in the field. The higher realizations obtained from the sales of fabricated cuts under the mark-up

permitted contributed to the strength in prices for live cattle which placed under hardship those establishments not selling to purveyors of meals.

In order to establish fair prices for all sellers to hotels and restaurants, it was deemed advisable to take the following steps:

- (1) List and precisely define a limited number of standard fabricated beef and veal cuts.
- (2) Determine fair percentages of mark-up over the prices of wholesale cuts to cover costs of fabrication, operating expenses and a fair net margin for—
 - (a) Hotel supply houses.
 - (b) Packers, packers' branch houses, wholesalers or other type of distributor.

* * * * * *

The amendment requires that hotel supply houses, packers' branch houses, and wholesalers certify their total sales by weight, of all meat products in the period September 15, 1942, to December 15, 1942, inclusive, and their sales of meats to purveyors of meals in the same period. Each seller is prohibited from selling in the form of fabricated cuts in any quarterly period ending August 31, November 30, February 28, and May 31 more than 70 per cent of the total weight volume of all meats that he sold to purveyors of meals in the three months ended December 15, 1942. In making these determinations, sales to war procurement agencies are to be excluded.

Hotel supply houses are defined as establishments which, in the three months ended December 15, 1942, sold or delivered to purveyors of meals at least 70 per cent of the total weight volume of all meats sold through such establishment. To qualify as a hotel supply house, a packing or slaughtering plant, packer's branch house or wholesaler's, or other type of establishment, *must have maintained a separate selling unit* not physically attached to the slaughtering plant, branch house, or wholesaler's, or other establishment, *through which* at least 70 per cent of the total weight volume of meat *distributed in the base period was sold* or delivered to purveyors of meals. Sales to war procurement agencies are to be excluded in making the calculations.

Allowing a higher percentage of mark-up for the maximum prices for fabricated cuts sold by hotel supply houses than for those sold by slaughterers and packers' branch houses, *tends to maintain the relationship* that existed in the past between prices obtained by the two types of sellers and *preserve their competitive positions*. It recognizes that the packer has obtained part of his profit in the price of the primal cut and that the diversified operations of the packer help to carry his overhead. In addition, the services rendered by packers to purveyors of meals have usually been less complete, thus making their costs in supplying this trade somewhat lower than the costs of the unaffiliated hotel supply companies.

* * * * *

IV. Effects of this amendment on the price level of fabricated beef cuts sold to purveyors of meals.

The maximum prices in this amendment are generally lower than the average of the ceiling prices for beef submitted under Revised Maximum Price Regulation No. 169. The mark-up used in calculating the specific ceiling prices for hotel supply houses was somewhat less than the 20 per cent mark-up previously permitted in Revised Maximum Price Regulation No. 169. That mark-up evidently afforded a wider margin of profit to distributors than did other types of sales outlets, as evidenced by the fact that many packers and slaughterers either began or increased operations in the hotel supply business after the regulation was issued. (*Italics added.*)

Appendix F

Excerpts From OPA Statement of Considerations Involved in the Issuance of Maximum Price Regulation No. 398 Dated May 22, 1943

Variety Meats and Edible By-Products at Wholesale.

* * * * *

Hotel supply houses are permitted to charge \$2.00 per hundred-weight more for products sold by them. Their establishments perform special services for purveyors of meals who require treatment different from that given the ordinary retailer. To perform these services, sellers catering to this trade need a much higher operating margin than do ordinary sellers.

This addition is limited, however, to hotel supply houses who can show that during March, 1942, 50 per cent of their business was done with purveyors of meals and who maintain establishments separate from that of a slaughterer.

The reasons for these limitations are several. The premiums allowed hotel supply houses in the other regulations have been abused. These additions established to compensate for a special way of doing business have been claimed by people who formerly had no interest in the trade. The slaughterers have sought to keep these additions themselves and have refused

meat to the established hotel supply houses selling to their trade, instead, at the higher prices. To prevent this and to restrict the premium to those houses whose expenses justify this addition the limitations set forth above were imposed.

Appendix G

Excerpt from
Rev. MPR-169, Amendment 12
Dated May 26, 1943

* * * * * *

1. Section 1364.407(e) is amended to read as follows:

(e) (1) *Every separate selling establishment* making sales to purveyors of meals, war procurement agencies, or other government agencies pursuant to the provisions of paragraph (o) of Section 1364.452 or paragraph (n) of Section 1364.467 shall keep for inspection by the Office of Price Administration for so long as the Emergency Price Control Act of 1942, as amended, is in effect, a complete and accurate record in schedule form for each calendar month commencing with January, 1943, with respect to beef, and June 1, 1943 with respect to veal showing separately: (i) the total inventory in pounds at the beginning of each month of each grade of each beef carcass, beef wholesale cut, fabricated beef cut, beef offal item and beef by-product (bones, fat, tallow, waste, etc.); veal carcass, veal wholesale cut, fabricated veal cut, veal offal item and veal by-product (bones, fat, tallow, waste, etc.); the total additions to inventory in pounds during the month for each grade of each such item; and the total inventory in pounds at the end of each month for each grade of each such item; (ii) the total sales in pounds during the month of each grade of beef carcass, beef wholesale cut, fabricated beef cut, beef offal item, and beef by-product (bones, fat, tallow, waste,

etc.); veal carcass, veal wholesale cut, fabricated veal cut, veal offal item, and veal by-product (bones, fat, tallow, waste, etc.), showing separately the sales in pounds of each grade of each item made to purveyors of meals, war procurement agencies and other government agencies *and the sales in pounds made to other buyers*; (iii) the total sales realization for each item separately enumerated in (ii) hereof (all sales of kosher meat shall be shown separately). (Italics added.)

Appendix H

Excerpt from
Revised MPR-169, Amendment 12
Dated May 26, 1943

* * * * * *

7. Section 1364.455(b) is added to read as follows:

(b) When used in this Revised Maximum Price Regulation No. 169 and when applicable to sales of fabricated beef cuts to purveyors of meals the term:

(1) "Hotel Supply House" means a separate selling establishment which is not physically attached to a packing or slaughtering plant, packer's branch house, wholesaler's or other selling establishment; which is engaged in the fabrication of meat cuts and in the sale of fabricated meat cuts, variety meats and edible by-products to purveyors of meals; and which during the period September 15 through December 15, 1942 sold to purveyors of meals, other than war procurement agencies, 70 per cent of the total weight volume of meat, variety meats, or edible by-products sold by it.

(2) "Purveyors of meals" means:

(i) any restaurant, hotel, cafe, cafeteria or establishment which purchases meats and where meals, food portions or refreshments are served for a consideration.

(ii) The Army, Navy, Marine Corps, Coast Guard, War Shipping Administration, or any agency of the United States.

(iii) Any person operating an ocean going vessel engaged in the transportation of cargo or passengers in foreign, coastwise or intercoastal trade, to the extent that meat is delivered to him as ship's stores for consumption aboard such vessel.

(iv) Any hospital, asylum, orphanage, prison or other similar institution, which is operated by any federal, state, or local government or agency thereof.

Appendix I

Excerpt from Revised Maximum Price Regulation No. 239

Lamb and Mutton Carcasses and Wholesale Cuts.

* * * * * *

Section 1364.172(b). Specifically, but not exclusively, the following practices are prohibited:

* * * * * *

(5) Selling or invoicing lamb or mutton by hotel supply houses to persons other than purveyors of meals at the prices allowed on sales to purveyors of meals.

Appendix J

Excerpt from Revised Maximum Price Regulation No. 169

Beef and Veal Carcasses and Wholesale Cuts.

* * * * *

Section 1364.454, Schedule III: Amounts which may be added to zone prices listed in Schedule I. Subject to the conditions hereinafter provided, the following may be added to the applicable zone price:

* * * * *

(5) * * * For local delivery made from the place of business of a wholesaler or *Hotel Supply House* located in Price Zone 1, 2, 5, 6, 7, 8, 9, or 10, to the place of business of a *seller at retail*, purveyor of meals or *commercial user*, or the designated delivery point of a war procurement agency or other government agency, located more than 25 miles from such shipping point: the seller may add the actual cost of local delivery computed at the lowest common carrier rate for the method of delivery used, but in no event more than 50¢ per cwt. (*Italics added.*)

* * * * *

Appendix K

Excerpt from
Statement of Considerations
Involved in the Issuance
of Amendment No. 1 to
Maximum Price Regulation No. 398
issued August 6, 1943

* * * * *

The allowance given hotel supply houses is amended so as to limit the overcharge that may be charged to sales made to purveyors of meals. It was not intended that retailers be charged the \$2.00 per hundredweight addition.

* * * * *

Appendix L

Excerpt from Revised Maximum Price Regulation No. 169

Amendment No. 12 Dated May 26, 1943

* * * * * *

4. Section 1364.452(o) is amended to read as follows:

* * * * * *

(4) The fabricated beef cut prices applicable in Zone 3 and 4 for sales by a hotel supply house to purveyors of meals, subject to the provisions in paragraph (k) of Section 1364.452 for the purpose of this paragraph (o) the term "fabricated beef cut" for the term "wholesale cut" contained therein, are as follows:

All prices are on a dollars per hundredweight basis: The price for any fraction of a hundredweight shall be reduced accordingly. The prices set forth herein include costs of packaging]

Fabricated beef cuts	Grade			
	Choice or AA	Good or A	Commercial or B	Utility or C
Round, rump and shank off.....	\$33.50	\$31.50	\$27.50	\$23.50
Boneless rump (butt).....	27.50	25.25	23.00	21.00
Round and shank.....	12.50	12.50	12.50	12.50
Boneless round.....	37.00	34.25	30.25	25.50
Side (top) round.....	41.50	37.75	33.00	27.50
Side (bottom) round.....	41.50	37.75	33.00	27.50
Chuck (face).....	30.00	30.00	27.00	24.00
Shankbone boneless round.....	36.25	33.00	29.50	25.25
Rip loin (bone in).....	58.25	52.50	44.00	35.00
Boneless strip.....	71.00	64.00	53.50	42.50
Trimmed full beef tenderloin.....	65.00	65.00	55.00	55.00
Trimmed sirloin tenderloin (butt tenderloin).....	65.00	65.00	55.00	55.00
Trimmed tip tenderloin (short tenderloin).....	65.00	65.00	55.00	55.00
Boneless sirloin (butt).....	38.50	35.00	29.50	24.00
Top sirloin (butt).....	49.00	46.00	40.00	32.00
Bottom sirloin (butt).....	31.00	27.25	22.00	18.50
Boneless chuck.....	28.25	27.50	25.75	23.00
Boneless chuck (shoulder clod out).....	27.50	26.75	25.25	22.50
Shoulder clod.....	31.00	31.00	28.00	25.00
Boneless briskets (deckle on).....	26.00	26.00	22.75	22.75
Boneless briskets (deckle off).....	32.75	32.75	28.00	28.00
Seven prepared rib.....	35.50	33.25	29.75	25.50
Five short ribs, plate short ribs.....	22.00	22.00	21.50	21.50
Five, boned, rolled, and tied.....	43.75	41.25	37.25	32.50
Smoker roll.....	(1)	(1)	45.25	38.75
Regular roll (rib eye).....	(1)	(1)	69.50	58.75
Boneless short plate.....	22.00	22.00	21.50	21.50
Beef steak.....	25.00	25.00	25.00	25.00
Shank steak (scored).....	28.75	28.75	28.75	28.75
Rib steaks (bone in).....	59.25	55.25	46.00	40.00
Boneless strip steaks.....	73.25	66.00	55.00	43.75
Quarterhouse steaks (bone in).....	59.25	55.25	46.00	40.00
Bone steaks (bone in).....	59.25	55.25	46.00	40.00
Boneless sirloin steaks.....	39.75	36.00	30.25	24.75
Top sirloin steaks.....	50.50	47.25	41.25	33.00

This grade not permitted to be sold and/or delivered.

Appendix M

Excerpt from Revised Maximum Price Regulation No. 169

Amendment No. 12

Dated May 26, 1943

* * * * *

4. Section 1364.452(o) is amended to read as follows:

* * * * *

(5) The fabricated beef cut prices applicable in Zones 3 and 4 for sales by packing or slaughtering plants, packing branch houses, wholesaler's or other selling establishment to purveyors of meals subject to the provisions in paragraph (k) of Section 1364.452, substituting for the purposes of this paragraph (o) the term "fabricated beef cut" for the term "whole-sale cut" contained therein, are as follows:

All prices are on a dollars per hundredweight basis: The price for any fraction of a hundredweight shall be reduced accordingly. The prices set forth herein include costs of packaging]

Fabricated beef cuts	Grade			
	Choice or AA	Good or A	Com- mercial or B	Utility or C
Round, rump and shank off.....	\$31.50	\$29.50	\$25.75	\$21.75
Boneless rump (butt).....	25.75	23.00	20.75	18.50
Round and shank.....	12.50	12.50	12.50	12.50
Boneless round.....	34.25	31.75	28.00	23.50
Side (top) round.....	38.25	34.75	30.50	25.25
Side (bottom) round.....	38.25	34.75	30.50	25.25
Chuck (face).....	28.50	28.50	25.50	23.00
Boneless boneless round.....	33.50	31.25	27.25	23.25
Strip loin (bone in).....	54.00	48.75	41.50	32.50
Boneless strip.....	65.75	59.25	50.25	39.50
Trimmed full beef tenderloin.....	60.00	60.00	50.00	50.00
Trimmed sirloin tenderloin (butt tenderloin).....	60.00	60.00	50.00	50.00
Trimmed tip tenderloin (short tenderloin).....	60.00	60.00	50.00	50.00
Boneless sirloin (butt).....	35.75	32.50	27.00	22.50
Top sirloin (butt).....	45.25	42.75	36.25	29.50
Bottom sirloin (butt).....	29.00	25.25	20.50	17.50
Boneless chuck.....	26.50	25.75	24.00	21.50
Boneless chuck (shoulder clod out).....	25.75	24.75	23.50	20.75
Shoulder clod.....	29.00	29.00	26.50	24.00
Boneless briskets (deckle on).....	24.25	24.25	21.00	21.00
Boneless briskets (deckle off).....	30.25	30.25	26.00	26.00
Open prepared rib.....	33.25	31.00	28.00	24.00
Plate short ribs, plate short ribs.....	19.75	19.75	19.25	19.25
Plate, boned, rolled, and tied.....	40.75	38.25	34.50	30.00
Smoker roll.....	(1)	(1)	41.50	35.50
Regular roll (rib eye).....	(1)	(1)	63.75	53.25
Boneless short plate.....	20.50	20.50	20.00	20.00
Beef steak.....	24.50	24.50	24.50	24.50
Round steak (scored).....	27.00	27.00	27.00	27.00
Round steaks (bone in).....	55.00	51.25	42.50	37.00
Boneless strip steaks.....	67.75	61.00	51.75	40.50
Quarterhouse steaks (bone in).....	55.00	51.25	42.50	37.00
Bone steaks (bone in).....	55.00	51.25	42.50	37.00
Boneless sirloin steaks.....	36.75	33.50	27.75	23.25
Top sirloin steaks.....	46.50	44.00	37.25	30.25

*This grade not permitted to be sold and/or delivered.

Appendix N

Excerpts from the Official Table of Trade Point Values for Meat, Fats, Fish, and Dairy Products

No. 4—Effective July 4, 1943.

* * * * * * *

Product	Points Per Lb.
MISCELLANEOUS BEEF PRODUCTS	
Suet, Cod, and Other Fats	3.0
MISCELLANEOUS VEAL PRODUCTS	
Suet and Other Fats	3.0
MISCELLANEOUS LAMB AND MUTTON PRODUCTS	
Suet and Other Fats	3.0

Appendix O

Price Interpretation No. 29

Issued by The Office of Price Administration

October 20, 1943

* * * * *

“Hotel Supply House” In order to retain its status, a hotel supply house must sell meat products only to purveyors of meals. If a hotel supply house sells a carcass, wholesale cut, fabricated cut, sausage, variety meats or edible by-products to a retailer it loses its status as a hotel supply house, as defined in Section 1364.455(b)(1). This interpretation applies also to Regulations No. 398 (Edible By-Products at Wholesale) 389 (Ceiling prices for certain sausage items at Wholesale) and 239 (Lamb and Mutton Carcasses and Cuts at Wholesale and Retail).

